

REPRESENTATIVE FOR PETITIONER:
Andrew R. Wolf, The Wolf Law Office

REPRESENTATIVE FOR RESPONDENT:
Bradley J. Adamsky, Drayton, Biege, Sirugo, & Elliott, LLP

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Steven W. Osborn,)	Petition No.:	46-060-18-1-5-00183-19
)		
Petitioner,)	Parcel No.:	46-10-13-300-042.000-060
)		
v.)	County:	LaPorte
)		
LaPorte County Assessor,)	Assessment Year:	2018
)		
Respondent.)		

Appeal from the Final Determination of the
LaPorte County Property Tax Assessment Board of Appeals

August 28, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Assessor accepted the burden of proving that the 2018 assessment of Osborn's property was correct, and we conclude the USPAP-compliant appraisal he presented supports the assessment. However, Osborn is not actually challenging the valuation of his property. He instead argued that the levying of any property taxes against his property is unconstitutional because it violates his inalienable right to property ownership as guaranteed by the Ninth Amendment to the U.S. Constitution. Because we lack the authority to declare Indiana's property tax regime unconstitutional, we cannot grant the relief he has requested.

PROCEDURAL HISTORY

2. Osborn contested the 2018 assessment of his property at 2995 S. 75 W. in LaPorte. The LaPorte County Assessment Board of Appeals ("PTABOA") issued a determination on December 13, 2018, valuing the residential property at \$171,800 (\$27,200 for land and \$144,600 for improvements).
3. Osborn timely filed a Form 131 petition with the Board. On May 30, 2019, Ellen Yuhan, our designated administrative law judge ("ALJ"), held a hearing on Osborn's appeal. Neither she nor the Board inspected the property.
4. Steven W. Osborn and Chief Deputy Assessor Stacey Sweitzer testified under oath.
5. Osborn presented no exhibits.
6. The Assessor submitted the following exhibits:
 - Respondent Exhibit 1: Notice of Hearing
 - Respondent Exhibit 2: Property record card for the subject property

Respondent Exhibit 3: Appraisal of William Sightes.

7. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d).
9. In this case, there was no dispute that the assessment increased by more than 5% from 2017 to 2018. And the Assessor stipulated that he therefore bears the burden of proof.

SUMMARY OF THE ASSESSOR'S CASE

10. The Assessor engaged William Sightes Appraisal, LLC to appraise the subject property. William Sightes is an Indiana Certified Residential Appraiser, and he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Sightes developed a sales-comparison approach using three comparable properties, and estimated the subject property's value to be \$185,000 as of January 1, 2018. The Assessor, however, is not asking that the assessment be increased to that value. *Sweitzer testimony; Resp't Ex. 3.*
11. To the extent that Osborn's appeal is a constitutional challenge, the Board can offer no remedy. The Board is an administrative agency and lacks the authority to declare a statute unconstitutional. The Tax Court has exclusive purview over deciding the

constitutionality of Indiana tax statutes. That was established in *Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax Ct. 1994). *Adamsky argument*.

SUMMARY OF OSBORN'S CASE

12. Osborn contends his appeal is not a valuation issue but a constitutional challenge. He asserts that the repeated levying of taxes on his property is a violation of his inalienable right of property ownership. Because of that, he seeks a refund of the entire amount of taxes he has paid on the subject property and requests that all future assessments of the property cease. If his requests are not granted, he will seek relief in a court of competent jurisdiction and will also sue for the continued violation of his inalienable, constitutional rights. *Osborn testimony*.

13. There are three principal issues in this case. One, the ability to own property is an inalienable right. Two, while it may be proper to tax someone who initially purchases property, it is wrong for the government to require him to periodically pay additional taxes in order to retain his property. It is also wrong to threaten to confiscate his property without just compensation if he does not regularly pay those taxes. Those are both against his inalienable right of property ownership. Three, the due process of law for taxes is invalid because it involves violating the inalienable rights of property owners—rights that are guaranteed and insured to us under the Ninth Amendment to the U.S. Constitution. *Osborn testimony*.

14. The right of real property ownership is a natural or inalienable right. From the earliest days, our progenitors have included, in the records of our republic, statements of this right of property ownership. While in some prior period of history, it might have been regarded as an acquired right, its existence and practice for centuries makes it a natural right all men should be able to expect. *Osborn testimony*.

15. Many of the rights in the Bill of Rights have had to be strenuously defended over the years and our other rights are just simply stated as retained. This indicates to Osborn that sometimes people have to press for unenumerated rights and that is what he is doing. He wishes to assert his rights in this matter, specifically, because others in past generations before him have unsuccessfully attempted to stand up to the impropriety of property taxes. *Osborn testimony.*

16. Osborn claims standing in this case in several respects. First, he is an owner of real property who has had the burden of property taxes placed on him for many years. And he has appealed to have his rights restored to him. Second, he is a descendant of people who were citizens of this country at the time of the adoption of the Constitution and they intended him to be a successor-in-interest to all those rights granted in the Constitution. Third, he is a natural citizen and the obligations of the oath of citizenship require him to defend and support the Constitution. *Osborn testimony.*

ANALYSIS AND CONCLUSIONS OF LAW

17. Indiana assesses property based on its “true tax value,” which is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). The DLGF defines “true tax value” as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id; see also, Kooshtard Property VI, LLC v. White River Twp. Ass’r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).

18. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2018 assessments, the valuation date was January 1, 2018. Ind. Code § 6-1.1-2-1.5(a).
19. As discussed above, the Assessor has the burden of proving that the subject property's 2018 assessment is correct. He offered a USPAP-compliant appraisal prepared by Sightes, a certified appraiser. Sightes relied on the sales-comparison approach in estimating the property's value to be \$185,000 as of January 1, 2018.
20. An appraisal performed in accordance with generally recognized appraisal principles is often enough to establish a prima facie case. *Meridian Towers*, 805 N.E.2d at 479. Here, Osborn did not attempt to impeach the credibility of Sightes' appraisal. Nor did he offer any valuation evidence of his own to rebut the appraisal. Accordingly, we conclude that the Assessor established a prima facie case supporting the 2018 assessment.
21. We now turn to Osborn's arguments regarding the constitutionality of Indiana's property tax regime. He argues that the levying of any property taxes against his property is unconstitutional because it violates his inalienable right to property ownership—a right guaranteed to him by the Ninth Amendment to the U.S. Constitution.
22. The Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). The Legislature has limited the types of appeals that are subject to our review to appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; (3) property tax exemptions; or (4) property tax credits; that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). Administrative agencies do not have the authority to declare a statute unconstitutional. *See Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax Ct. 1994) (stating that allegations a statute is

unconstitutional are matters solely for judicial determination). Accordingly, we cannot declare Indiana's property tax regime unconstitutional. In any event, Osborn has failed to persuade us that property taxes are unconstitutional, and he has failed to raise any other constitutional challenges regarding due process or equality and uniformity. For those reasons, we find for the Assessor.

SUMMARY OF FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.